

**RECEIVED
CENTRAL FAX CENTER****JUL 27 2006****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/740,254
Inventor(s) : Hisatoshi (NMN) Masuda *et al.*
Filed : December 18, 2003
Art Unit : 1617
Examiner : Marina Lamm
Docket No. : AA-555C
Confirmation No. : 1912
Customer No. : 27752
Title : PERSONAL CARE COMPOSITION COMPRISING
HYDROPHOBIC GEL

07/28/2006 FFANAEIA 00000011 162480 10740254

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APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

This Appeal Brief is submitted in support of the Notice of Appeal transmitted to the PTO via facsimile on July 25, 2006, which set a two-month period for response.

REAL PARTY IN INTEREST

The real party of interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

STATUS OF CLAIMS

Claims 1-14 are pending in the present application. Claims 4-8 and 12-14 have been withdrawn. Claims 1-3 and 9-11 have been rejected. Claims 1-3 and 9-11 are

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appealed. A complete copy of the appealed claims is set forth in the Claims Appendix attached hercin.

STATUS OF AMENDMENTS

No amendment was filed.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to a polyol-in-silicone emulsion consisting essentially of an alkyl dimethicone copolyol having an HLB of from about 4 to about 6, and a molecular weight of from about 10,000 to about 20,000, wherein the alkyl group is made of about 10 to about 22 carbons; and a polyol, wherein the weight ratio of the alkyl dimethicone copolyol to the polyol is from about 100:1 to about 2:8 (specification, page 2, lines 17-23). The polyol-in-silicone emulsion may consist essentially of the alkyl dimethicone copolyol, the polyol, and a hydrophilic skin treatment agent (specification, page 3, lines 16-19).

The present invention further relates to a method of making the polyol-in-silicone emulsion by mixing the alkyl dimethicone copolyol with the polyol at a speed of at least about 1000rpm, and at a temperature of at least about 40°C (specification, page 6, lines 14-18).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- (I) Rejection under 35 USC §102(b) over US Patent No. 6,241,976.
- (II) Rejection under 35 USC §103(a) over US Patent No. 6,241,976.

ARGUMENTS

I. Claims 1-3 and 9 are not anticipated by Esser because Esser does not disclose several of the present application's claimed elements.

Claims 1-3 and 9 have been rejected under 35 U.S.C. §102(b) as being anticipated by Esser et al., US 6,241,976 (hereinafter "Esser"). Appellants respectfully traverse this rejection. Appellants' Claim 1 requires that the polyol-in-silicone emulsion consists essentially of the alkyl dimethicone copolyol and the polyol (i.e. the polyol-in-silicone

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emulsion does not contain materials which may interfere with the stability of the polyol-in-silicone emulsion). Esser teaches an antiperspirant composition containing a structured emulsion of a continuous phase and a disperse phase.

The Office Action of July 20, 2006 states that Appellants have not presented evidence that the presence of additional components would materially affect the basic and novel characteristics of the claimed emulsion. Appellants respectfully submit that page 5, lines 19-26 of the specification explains that in order to obtain a stable polyol-in-silicone emulsion, the polyol-in-silicone emulsion preferably does not contain components other than the alkyl dimethicone copolyol, the polyol, and optional hydrophilic skin treatment agents. The specification further explains that materials which may interfere with the stability of the polyol-in-silicone emulsion, and thus the polyol-in-silicone emulsion should be free of, are: other emulsifiers, lower alcohols, oils including esters and hydrocarbon oils, thickeners including fatty acid, fatty alcohol, and waxes, and more than 0.01% water by weight of the polyol-in-silicone emulsifier.

The discussion under Example 2 in Esser indicates that the emulsion of Esser contains materials which may interfere with the stability of the polyol-in-silicone emulsion of the present invention. Esser does not disclose a polyol-in-silicone emulsion that consists essentially of the alkyl dimethicone copolyol and the polyol.

Appellants contend that the Esser reference does not anticipate Appellants' claims. Therefore, Appellants contend that the present invention is novel in view of Esser and that the rejection should be withdrawn.

II. Claims 10-11 are patentable over Esser because the reference does not teach or suggest all of the claim limitations.

Claims 10-11 have been rejected under 35 USC §103(a) as being unpatentable over Esser et al., US 6,241,976 (hereinafter "Esser"). Appellants respectfully traverse this rejection, as the Esser reference does not teach or suggest all of the claim limitations of the present invention, as required in MPEP 2143.03. Thus, the obviousness rejection given in the Office Action does not establish a *prima facie* case of obviousness. Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

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Appellants' Claim 1 (from which Claims 10-11 depend) requires that the polyol-in-silicone emulsion consists essentially of the alkyl dimethicone copolyol and the polyol (i.e. the polyol-in-silicone emulsion does not contain materials which may interfere with the stability of the polyol-in-silicone emulsion). As discussed above, Esser teaches an antiperspirant composition containing a structured emulsion of a continuous phase and a disperse phase. The discussion under Example 2 in Esser indicates that the emulsion of Esser contains materials which may interfere with the stability of the polyol-in-silicone emulsion of the present invention. Esser does not teach or suggest a polyol-in-silicone emulsion that consists essentially of the alkyl dimethicone copolyol and the polyol. Therefore, Appellants contend that a *prima facie* case of obviousness has not been established, and the claimed invention is not obvious in view of the cited reference.

Esser does not teach or suggest all of Appellants' claim limitations. Therefore, Appellants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

SUMMARY

In view of all of the above, it is respectfully submitted that the aforementioned rejections are erroneous. The Board's reversal of the rejections is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY



Signature

Laura L. Whitmer
Typed or printed name
Registration No. 52,920
(513) 626-2721

Date: July 27, 2006
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CLAIMS APPENDIX

1. (Rejected) A polyol-in-silicone emulsion consisting essentially of:
 - (i) an alkyl dimethicone copolyol having an HLB of from about 4 to about 6, and a molecular weight of from about 10,000 to about 20,000, wherein the alkyl group is made of about 10 to about 22 carbons; and
 - (ii) a polyol, wherein the weight ratio of the alkyl dimethicone copolyol to the polyol is from about 100 : 1 to about 2 : 8;wherein said polyol-in-silicone emulsion consists essentially of said alkyl dimethicone copolyol and said polyol.
2. (Rejected) The polyol-in-silicone emulsion of claim 1, further comprising hydrophilic skin treatment agent in an amount soluble in the polyol.
3. (Rejected) A personal care composition comprising by weight:
 - (a) from about 0.01% to about 65% of the polyol-in-silicone emulsion according to Claim 1; and
 - (b) a carrier.
4. (Withdrawn) The personal care composition of Claim 3 wherein the composition is a lipstick, wherein the carrier comprises a solid wax, an oil, and a pigment.
5. (Withdrawn) The lipstick composition of Claim 4 comprising by weight:
from about 0.1% to about 20% of the polyol-in-silicone emulsion;
from about 10% to about 20% of the solid wax;
from about 30% to about 80% of the oil; and
from about 2% to about 20% of the pigment.
6. (Withdrawn) The personal care composition of Claim 3 wherein the composition is a foundation, wherein the carrier comprises an oil, and a pigment.

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7. (Withdrawn) The foundation composition of Claim 6 wherein the carrier further comprises a film forming agent.

8. (Withdrawn) The personal care composition of Claim 3 wherein the composition is a make-up remover, wherein the carrier comprises a deterative surfactant and water.

9. (Rejected) The personal care composition of Claim 3 wherein the composition is an antiperspirant, wherein the carrier comprises a thickening agent, and an antiperspirant active.

10. (Rejected) A method of making the polyol-in-silicone emulsion according to Claim 1 comprising mixing the alkyl dimethicone copolyol with the polyol at a speed of at least about 1000 rpm and at a temperature of at least about 40°C.

11. (Rejected) A method of making the polyol-in-silicone emulsion according to Claim 2 comprising the steps of:

- (a) mixing the polyol and the hydrophilic skin treatment agent; and
- (b) mixing the alkyl dimethicone copolyol with the product of step (a) at a speed of at least about 1000 rpm and at a temperature of at least about 40°C.

12. (Withdrawn) An anhydrous personal care composition comprising by weight:

- (a) from about 0.01% to about 15% of an alkyl dimethicone copolyol having an HLB of from about 4 to about 6, and a molecular weight of from about 10,000 to about 20,000, wherein the alkyl group is made of about 10 to about 22 carbons;
 - (b) from about 0.01% to about 35% of a polyol, wherein the weight ratio of the alkyl dimethicone copolyol to the polyol is from about 100 : 1 to about 2 : 8; and
- wherein the composition is substantially free of water.

13. (Withdrawn) The anhydrous personal care composition of Claim 12 wherein the composition is a lipstick, comprising by weight:
from about 0.01% to about 15% of the alkyl dimethicone copolyol;

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from about 0.01% to about 35% of the polyol;
from about 10% to about 20% of a solid wax;
from about 30% to about 80% of an oil; and
from about 2% to about 20% of a pigment.

14. (Withdrawn) The anhydrous personal care composition of Claim 12 further comprising a hydrophilic skin treatment agent in an amount soluble in the polyol.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.

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U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL for FY 2006 Patent fees are subject to annual revision. Effective December 8, 2004	Complete if Known	
	Application Number	10/740,254
	Confirmation Number	1912
	Filing Date	December 18, 2003
	First Named Inventor	Hisatoshi (NMN) Masuda <i>et al.</i>
	Examiner Name	Marina Lamm
	Art Unit	1617
TOTAL AMOUNT OF PAYMENT (\$500)		Docket No. AA555C

METHOD OF PAYMENT 1. <input checked="" type="checkbox"/> The Director is hereby authorized to charge indicated fees submitted on this form, credit any over payments, and charge any additional fee(s) during the pendency of this application to: Deposit Account Number: 16-2480 Deposit Account Name: The Procter & Gamble Company	FEE CALCULATION (continued) 5. ADDITIONAL FEES <table border="1"> <thead> <tr> <th>Fee Description</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Extension for reply within 1st month</td> <td>(\$120) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 2nd month</td> <td>(\$450) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 3rd month</td> <td>(\$1,020) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 4th month</td> <td>(\$1,590) <input type="checkbox"/></td> </tr> <tr> <td>Extension for reply within 5th month</td> <td>(\$2,160) <input type="checkbox"/></td> </tr> <tr> <td>Information Disclosure Statement fee</td> <td>(\$180) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)</td> <td>(\$130) <input type="checkbox"/></td> </tr> <tr> <td>37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet</td> <td>(\$50) <input type="checkbox"/></td> </tr> <tr> <td>Non-English specification</td> <td>(\$130) <input type="checkbox"/></td> </tr> <tr> <td>Notice of Appeal</td> <td>(\$500) <input type="checkbox"/></td> </tr> <tr> <td>Filing a brief in support of an appeal</td> <td>(\$500) <input checked="" type="checkbox"/></td> </tr> <tr> <td>Request for oral hearing</td> <td>(\$1,000) <input type="checkbox"/></td> </tr> <tr> <td>Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)</td> <td>(\$1,370) <input type="checkbox"/></td> </tr> <tr> <td>Other:</td> <td><input type="checkbox"/></td> </tr> </tbody> </table>	Fee Description	Fee Paid	Extension for reply within 1 st month	(\$120) <input type="checkbox"/>	Extension for reply within 2 nd month	(\$450) <input type="checkbox"/>	Extension for reply within 3 rd month	(\$1,020) <input type="checkbox"/>	Extension for reply within 4 th month	(\$1,590) <input type="checkbox"/>	Extension for reply within 5 th month	(\$2,160) <input type="checkbox"/>	Information Disclosure Statement fee	(\$180) <input type="checkbox"/>	37 CFR 1.16(f) Late Oath/Declaration (nonprovisional)	(\$130) <input type="checkbox"/>	37 CFR 1.17 (q) Surcharge - Late provisional filing fee or cover sheet	(\$50) <input type="checkbox"/>	Non-English specification	(\$130) <input type="checkbox"/>	Notice of Appeal	(\$500) <input type="checkbox"/>	Filing a brief in support of an appeal	(\$500) <input checked="" type="checkbox"/>	Request for oral hearing	(\$1,000) <input type="checkbox"/>	Acceptance of unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (a) or (c)	(\$1,370) <input type="checkbox"/>	Other:	<input type="checkbox"/>
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FEE CALCULATION 2. BASIC FILING FEE - Large Entity <table border="1"> <thead> <tr> <th>FILING FEE</th> <th>SEARCH FEE</th> <th>EXAMINATION FEE</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Application Type</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Nonprovisional (\$300)</td> <td>(\$500)</td> <td>(\$200)</td> <td>(Total = \$1000) <input type="checkbox"/></td> </tr> <tr> <td>Utility</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Design (\$200)</td> <td>(\$100)</td> <td>(\$130)</td> <td>(Total = \$430) <input type="checkbox"/></td> </tr> <tr> <td>Reissue (\$300)</td> <td>(\$500)</td> <td>(\$600)</td> <td>(Total = \$1400) <input type="checkbox"/></td> </tr> <tr> <td>Provisional Utility filing fee</td> <td></td> <td>(Total = \$200)</td> <td><input type="checkbox"/></td> </tr> </tbody> </table>	FILING FEE	SEARCH FEE	EXAMINATION FEE	Fee Paid	Application Type				Nonprovisional (\$300)	(\$500)	(\$200)	(Total = \$1000) <input type="checkbox"/>	Utility				Design (\$200)	(\$100)	(\$130)	(Total = \$430) <input type="checkbox"/>	Reissue (\$300)	(\$500)	(\$600)	(Total = \$1400) <input type="checkbox"/>	Provisional Utility filing fee		(Total = \$200)	<input type="checkbox"/>			
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3. APPLICATION SIZE FEE: Sheets of Spec and Drawings <input type="checkbox"/> (\$250 for each 50 sheets in excess of 100, except for sequence and program listings) SUBTOTAL (2)+(3) (\$) <input type="checkbox"/>																															
4. EXTRA CLAIM FEES FOR UTILITY AND REISSUE: <table border="1"> <thead> <tr> <th></th> <th>Extra Claims</th> <th>Fee from Below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr> <td>Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> <tr> <td>Multiple Dependent claims:</td> <td><input type="checkbox"/></td> <td>=</td> <td><input type="checkbox"/></td> </tr> </tbody> </table> ** or number previously paid, if greater; For Reissues, see below Fee Description Claims in excess of 20 (\$50 per claim) Independent claims in excess of 3 (\$200 per claim) Multiple dependent claim, if not paid (\$360) **Reissue: each independent claim over 3 and more than in the original patent (\$200 per claim) **Reissue claims: each claim over 20 and more than original patent (\$50 per claim) SUBTOTAL (4) (\$) <input type="checkbox"/>		Extra Claims	Fee from Below	Fee Paid	Total Claims <input type="checkbox"/> - 20** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Independent Claims <input type="checkbox"/> - 3** = <input type="checkbox"/> x	<input type="checkbox"/>	=	<input type="checkbox"/>	Multiple Dependent claims:	<input type="checkbox"/>	=	<input type="checkbox"/>	SUBTOTAL (5) (\$) <input type="checkbox"/>														
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SUBMITTED BY		Complete (if applicable)	
Name (Print/Type)	Laura L. Whitmer	Registration No.	52,920
Signature	<i>Laura L. Whitmer</i>	Telephone	(513) 626-2721
		Date	July 27, 2006

This collection of information is required by 37 CFR 1.17. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon individual case. Any comments on the amount of time you are required to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P. O. Box 1450, Alexandria, VA 22313-1450. DO NOT FORGET TO COMPLETE ALL REQUIRED INFORMATION. FAILURE TO DO SO MAY RESULT IN YOUR APPLICATION BEING DEEMED INCOMPLETE AND YOUR FEE BEING REFUSED.

JUL 27 2006

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FROM: Cora A. Wray (Typed or printed name of person signing Certificate)

Fax No. 513-626-1355

Phone No. 513-626-6622

Application No.: 10/740,254

Inventor(s): Hisatoshi (NMN) Masuda *et al.*

Filed: December 18, 2003

Docket No.: AA555C

Confirmation No.: 1912

FACSIMILE TRANSMITTAL SHEET AND**CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. §1.8**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on July 27, 2006, to the above-identified facsimile number.

Cora A. Wray (Signature)

Listed below are the item(s) being submitted with this Certificate of Transmission:**

- 1) Fee Transmittal - 1 page
- 2) Appeal Brief - 9 pages

Number of Pages Including this Page: **11****Comments:**

****Note:** Each paper must have its own certificate of transmission, OR this certificate must identify each submitted paper.

(FAX-USPTO.doc Revised 11/18/2005)